

## 48A C.J.S. Judges § 228

Corpus Juris Secundum | August 2023 Update

### Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

### IX. Disqualification to Act

#### A. In General

§ 228. Generally; right to impartial trial

[Topic Summary](#) | [References](#) | [Correlation Table](#)

#### West's Key Number Digest

West's Key Number Digest, [Judges](#)  39

**The principle on which rules for the disqualification of judges is based is that no judge should preside in a case in which the judge is not wholly free, disinterested, impartial, and independent.**

Independence and impartiality are required of the courts.<sup>1</sup> The underlying principle of rules for the disqualification of judges is that no judge should preside in a case in which the judge is not wholly free, disinterested, impartial, and independent.<sup>2</sup> Parties have a right to a neutral and detached judicial officer.<sup>3</sup> Therefore, a judge should not try a case in which there is any substantial ground on which to base a claim of disqualification.<sup>4</sup> On the other hand, a judge is presumed to be impartial.<sup>5</sup> The disqualification of a judge should be viewed as an extraordinary occurrence,<sup>6</sup> and, thus, the decision to remove a judge from an ongoing trial should be considered seriously and made only rarely.<sup>7</sup>

Next in importance to the duty of rendering a righteous judgment is that of doing it in such a manner as will beget no suspicion of the fairness and integrity of the judge.<sup>8</sup> Thus, the law requires not only that a judge be impartial but also that the judge appear to be impartial.<sup>9</sup> Fairness requires not only the absence of actual bias of the judge but also endeavors to prevent even the possibility of unfairness.<sup>10</sup> For disqualification purposes, the test for whether a judge's impartiality might reasonably be questioned is objective.<sup>11</sup> Therefore, the standard or test is not whether the judge is impartial in fact but rather whether a reasonable person might question the judge's impartiality under all circumstances.<sup>12</sup> Inasmuch as the appearance of partiality may vary from district to district, a "community standard" may be applied to questions of whether a judge should disqualify him- or herself for the reason that the judge's impartiality might reasonably be questioned.<sup>13</sup> Concerns regarding an appearance of impropriety if the judge presides over the case must be balanced against the judge's duty to hear the cases that come before the judge.<sup>14</sup> If a judge proceeds in a case when there is an appearance of impropriety, the injury is to the judicial system as a whole.<sup>15</sup>

A party or attorney should not be permitted to cause the disqualification of a judge by virtue of his or her own intentional actions.<sup>16</sup> A motion to recuse is not intended to give litigants a veto power over sitting judges or a vehicle for obtaining a judge of their choice.<sup>17</sup>

***"Recusal" distinguished from "disqualification."***

"Recusal" is the process by which a trial court voluntarily removes itself, while "disqualification" is the process by which a party seeks to remove a judge from the case.<sup>18</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

When addressing allegations of judicial bias, the Court of Appeals considers whether the comments were improper and, if so, whether the complaining party can show serious prejudice; the review focuses on the entire record, not an isolated comment or two, and even an imperfect trial is not necessarily an unfair trial. [U.S. v. Ayala-Vazquez, 751 F.3d 1 \(1st Cir. 2014\)](#).

Judge did not abuse discretion in refusing to recuse himself from conducting defendant's trial for criminal possession of stolen property because judge had presided over several prior criminal prosecutions of defendant and made negative comments about his character and criminality during

one of those proceedings; there was no legal disqualification, and defendant otherwise made no showing that the judge's alleged bias affected the result of the trial. [N.Y. Judiciary Law § 14](#). [People v. Terborg](#), 156 A.D.3d 1320, 67 N.Y.S.3d 730 (4th Dep't 2017).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 Okla.—[Bowen v. State ex rel. Oklahoma Real Estate Appraiser Bd.](#), 2011 OK 86, 270 P.3d 133 (Okla. 2011).  
Tenn.—[In re Hooker](#), 340 S.W.3d 389 (Tenn. 2011).
- 2 Ala.—[Ex parte Duncan](#), 638 So. 2d 1332 (Ala. 1994).  
Me.—[State v. Marden](#), 673 A.2d 1304 (Me. 1996).
- 3 Iowa—[In re Marriage of Ricklefs](#), 726 N.W.2d 359 (Iowa 2007).
- 4 Ala.—[Morgan County Commission v. Powell](#), 292 Ala. 300, 293 So. 2d 830 (1974).  
As to grounds for disqualification, see §§ 245 to 297.
- 5 Mont.—[Reichert v. State ex rel. McCulloch](#), 2012 MT 111, 365 Mont. 92, 278 P.3d 455 (2012).
- 6 U.S.—[In re Stoller](#), 374 B.R. 618 (Bankr. N.D. Ill. 2007).
- 7 U.S.—[Huber v. Taylor](#), 532 F.3d 237, 71 Fed. R. Serv. 3d 45 (3d Cir. 2008).
- 8 Ill.—[Matter of Lilly's Estate](#), 41 Ill. App. 3d 348, 354 N.E.2d 96 (2d Dist. 1976).
- 9 D.C.—[In re J.A.](#), 601 A.2d 69 (D.C. 1991).  
Haw.—[Sussel v. City and County of Honolulu Civil Service Com'n](#), 71 Haw. 101, 784 P.2d 867 (1989).  
**Recusal required whenever impartiality might reasonably be questioned**  
U.S.—[Liteky v. U.S.](#), 510 U.S. 540, 114 S. Ct. 1147, 127 L. Ed. 2d 474 (1994).
- 10 Utah—[Anderson v. Industrial Com'n of Utah](#), 696 P.2d 1219 (Utah 1985).
- 11 Nev.—[Ybarra v. State](#), 247 P.3d 269, 127 Nev. Adv. Op. No. 4 (Nev. 2011), cert. denied, 132 S. Ct. 1904, 182 L. Ed. 2d 776 (2012).
- 12 N.D.—[Baier v. Hampton](#), 440 N.W.2d 712 (N.D. 1989).  
As to disqualification on judge's own motion, see § 299.  
**No recusal where reasonable person would not believe judge had interest or bias**  
U.S.—[Sao Paulo State of Federative Republic of Brazil v. American Tobacco Co., Inc.](#), 535 U.S. 229, 122 S. Ct. 1290, 152 L. Ed. 2d 346 (2002).
- 13 U.S.—[Smith v. Pepsico, Inc.](#), 434 F. Supp. 524 (S.D. Fla. 1977).

- 14 Ark.—Worth v. Benton County Circuit Court, 351 Ark. 149, 89 S.W.3d 891 (2002).
- 15 Haw.—State v. Gomes, 93 Haw. 13, 995 P.2d 314 (2000), as amended on other grounds, (Mar. 23, 2000).
- 16 Nev.—Millen v. Eighth Judicial Dist. ex rel. County of Clark, 122 Nev. 1245, 148 P.3d 694 (2006).
- 17 U.S.—White v. National Football League, 585 F.3d 1129, 74 Fed. R. Serv. 3d 1615 (8th Cir. 2009); In re Evergreen Sec., Ltd., 363 B.R. 267 (Bankr. M.D. Fla. 2007).
- 18 Fla.—Forrest v. State, 904 So. 2d 629 (Fla. 4th DCA 2005).

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